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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,355	08/06/2003	Russell L. Pond	042933/310237	8888
826	7590	08/10/2007	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			FRENEL, VANEL	
		ART UNIT	PAPER NUMBER	
		3627		
		MAIL DATE	DELIVERY MODE	
		08/10/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/635,355	POND ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vanel Frenel	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 September 2000.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 03072005, 04172006.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

**Notice to Applicant**

1. This communication is in response to the application filed on 09/29/00. Claims 1-10 are pending.

***Claim Rejections - 35 USC § 112***

2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the initiation of a mobile payment session" in line 6-7. It is unclear to the Examiner as to what type of "the initiation of a mobile payment session" Applicant is referring to. There is insufficient antecedent basis for this limitation in the claim.

Since claims 2-4 depend on claim 1, therefore claims 2-4 are similarly rejected under 112, second paragraph.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vazvan (WO 97/45814, December 4, 1997) in view of Flom et al (2001/0054087).

(A) As per claim 1, Vazvan discloses a system for facilitating electronic payments in a food service setting using a mobile device enabled for short range proximity signaling and two way messaging (See Vazvan, Fig.6, Page 9, lines 11-41) said system comprising:

a proximity reader for interacting with said mobile device presented to said proximity detector by a user, wherein said proximity reader uses short range proximity signaling to trigger the initiation of a mobile payment session (See Vazvan, Page 9, lines 27-41);

a plurality of servers for providing authentication of user and processing payments (See Vazvan, Fig.2, Page 6, lines 9-27) ;

a plurality of point of sale terminals to provide access to transaction information (See Vazvan, Fig.3, Page 11-38); and a messaging system for providing mobile commerce messaging with said user, wherein said mobile commerce messaging includes digital content of at least one of digital cash (See Vazvan, Page 9, lines 11-22).

Vazvan does not explicitly disclose that the system having coupons, advertisements, games, ring-tones, graphics, videos via messaging, promotion of a plurality of different items to purchase.

However, these features are known in the art, as evidenced by Flom. In particular, Flom suggested that the system having coupons (See Flom, Page 2, Paragraphs 0012, 0015), advertisements (See Flom, Page 2, Paragraphs 0012, 0015),

games (See Flom, Page 7, Paragraph 0068), ring-tones (See Flom, Page 7, Paragraph 0069), graphics (See Flom, Page, 5, Paragraph 0056), videos via messaging (See Flom, Page 5, Paragraph 0056), promotion of a plurality of different items to purchase (See Flom, Page 5, Paragraph 0050, Page 6, Paragraphs 0064-0065).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Flom within the system of Vazvan with the motivation of providing offer, advertisement, or coupon to the user (See Flom, Page 2, Paragraph 0015).

(B) As per claim 2, Vazvan discloses the system wherein the proximity reader provides an interface to download said digital content (See Vazvan, Page 9, lines 11-26).

(C) As per claim 3, Vazvan discloses a system wherein the server communicates with said user of mobile device via messaging (See Vazvan, Page 10, lines 33-39).

(D) As per claim 4, Vazvan discloses a system wherein the server communicates with said user of mobile device via voice (See Vazvan, Page 10, lines 33-39).

5. Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vazvan (WO 97/45814, December 4, 1997) in view of Meyer et al (5,933,812).

Art Unit: 3627

(A) As per claim 5, Vazvan discloses a method for facilitating the payment of products in a restaurant, said method comprising: using a mobile device enabled for short range proximity signaling and two way messaging to provide a short range proximity signal to a proximity reader presenting said mobile device to said proximity reader (See Vazvan, Fig.6, Page 9, lines 11-41); providing identification information to a payment system (See Vazvan, Fig.2, Page 6, lines 9-27); providing verification of identity information by payment system to said mobile device; (See Vazvan, Fig.6, Page 9, lines 11-41); ordering a plurality of products and accumulating charges (See Vazvan, Page 9, lines 34-41);

Vazvan does not explicitly disclose that the method has receiving on a display of said mobile device an electronic bill for a total charge.

However, this feature is known in the art, as evidenced by Meyer. In particular, Meyer suggests that the method has receiving on a display of said mobile device an electronic bill for a total charge (See Meyer, Fig.21, Col.7, lines 37-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Vazvan within the system of Meyer with the motivation of providing a portable transaction data entry terminal that is especially suited for eating and drinking establishments (See Meyer, Col.3, lines 1-4).

(B) As per claim 6, Vazvan discloses the method further comprising: receiving a plurality of messages offering additional items to purchase on said display (See Vazvan, Page 8, lines 16-41); adding a plurality of additional charges to said electronic bill (See

Vazvan, Page 8, lines 16-41); and approving of said total charge plus said plurality of additional charges (See Vazvan, Page 8, lines 16-41 to Col.9, line 10).

(C) As per claim 7, Meyer discloses the method further comprising: adding a tip to said electronic bill (See Meyer Col.2, lines 7-27); and approving of said total charge plus tip (See Meyer, Col.2, lines 7-27; Col.8, lines 58-60).

The motivation for combining the respective teachings of Vazvan and Meyer are as discussed in the rejection of claim 5 above, and incorporated herein.

(D) As per claim 8, Vazvan discloses the method wherein the verification of identity information is capable of being displayed in human readable form on display (See Vazvan Page 6, lines 9-25).

(E) As per claim 9, Vazvan discloses the method wherein the verification of identity information is in machine readable form (See Vazvan Page 6, lines 9-25).

(F) As per claim 10, Vazvan discloses the method wherein the ordering of product is done automatically by the selection of the product itself (See Vazvan Page 8, lines 30-41 to Page 9, line 10).

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches method and apparatus for transmitting and tendering electronic cash using phone wallet (2001/0011248).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zeender Ryan Florian can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/635,355

Page 8

Art Unit: 3627

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Art Unit

August 6, 2007